Filed 5/5/14 P. v. Reyes CA1/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. REY BEJAR REYES, Defendant and Appellant.	A134866 (Mendocino County Super. Ct. No. SCUK-CRCR 10-15732)

Defendant Rey Bejar Reyes appeals from a judgment entered upon a jury verdict finding him guilty of second degree murder (Pen. Code, § 187, subd. (a)). The jury also found true the allegations that defendant used a firearm and intentionally discharged it within the meaning of Penal Code section 12022.53, subdivision (d). Defendant contends the trial court erred in failing, sua sponte, to instruct the jury on theories of reasonable and imperfect self-defense and in denying defendant's motion for a new trial based on prejudicial juror misconduct. We shall affirm the judgment.

I. FACTUAL BACKGROUND

A. Prosecution Case

Defendant and his wife Misty Champlin lived together in Laytonville. In January 2010, Colin Champlin, Misty's 21-year-old son from a previous marriage, came to live with defendant and Misty.[1] On the evening of December 1, 2010, defendant shot and

[1] Because Misty Champlin and Colin Champlin have the same last name, we shall refer to them by their first names. We intend no disrespect.

killed Colin. Defendant did not deny that he killed Colin, but took the position at trial that the killing was manslaughter rather than murder.

On the night of the killing, detectives interviewed Misty, who gave her account of what happened that night. In the interview, Misty told detectives that earlier that evening, she and Colin had been working together. When they returned home, defendant, Misty, and Colin began drinking vodka, and Misty began cooking dinner. At dinner, defendant complained about the food and became belligerent. Colin told defendant that he had hurt Misty's feelings, and defendant responded by telling him to mind his own business. When Misty saw that defendant was becoming angrier, she told him to go to bed.

Defendant walked into the bedroom and slammed the door. Meanwhile, Colin was showing Misty music videos on her laptop in the living room. The two began whispering to each other, and Colin told Misty to leave defendant. Misty said to Colin, "You know, it's time. I'm — I'm done with this. I'm done with being abused. . . . I don't want to do this anymore." Colin responded, "Good. Shh." Misty thought defendant might have overheard the conversation. Misty told officers that defendant suddenly came out of the bedroom, and without saying anything, fired two shots at Colin. The second shot struck Colin in the head, killing him instantly. Defendant then said to Misty, "Oh, you're fucking your son." Misty ran out of the house and called the police.

In her testimony at trial, Misty provided additional details that had not been included in her statement to the detectives. She testified that Colin gave defendant a "nasty look" on the evening of the killing, and that Colin, who had been keeping a gun in the front of his pants, would flash the gun "like a gangster." Misty claimed that when defendant was walking into the bedroom, Colin reached into his waistband as if he were reaching for a gun.

Police officers found Colin slumped on the couch, with a bullet wound to his forehead. There was a handgun inside Colin's back waistband.

B. Defendant's Statement to Police

After the shooting, defendant gave a statement to police. Defendant suspected Colin and Misty were sexually involved with each other, and had told Misty of his suspicions. Defendant stated that while he had never caught them having sex, he had noticed signs of such activity, such as Misty wearing low-cut tops and playing around with the dogs while facing her son.

The night of the killing, Colin and defendant got into an argument about the fact that Misty was supporting the family. After he went into his bedroom, defendant could hear Colin and Misty talking in hushed tones. Defendant heard Colin say to Misty, "He's not gonna hear anything. He's not gonna hear anything. Come on, Mom." Colin continued to urge his mother, saying, "Come on, he's asleep. He's asleep." Misty finally gave in, saying, "Okay, let's go in your bedroom."

Defendant reached his breaking point. He had "been seeing it going on for a while, and [he] couldn't stand it any more." Defendant grabbed a gun from under his pillow and walked into the living room to confront Colin and Misty. He knew Colin had a gun and thought Colin might "pull[] it" on him. Defendant said to them, "You're talking about going into your—into his fucking bedroom and fucking?" Misty denied his accusation, and when Colin saw the gun in defendant's hand, he said, "What? What? Are you going to fucking shoot me, mother fucker?" Defendant claimed that Colin reached for something. Defendant did not know if Colin had his gun, but knew he normally carried it. Defendant admitted that he knew "[Colin] couldn't shoot me because he doesn't know shit about guns." Defendant then shot Colin.

Defendant told the detectives that he "snapped" because "[Colin] was telling me that he was going to fuck . . . his mom." He told the officers, "when they were talking about it that night, it just fucking took me over the edge." Defendant told officers "[i]f he hadn't of said to me, 'yeah, I've been fucking my mom,' that's when I fucking pulled up the gun and fucking shot him."

C. Defense Case

Defendant testified at trial in his own defense. According to defendant, he had confronted Misty about Colin's inappropriate behavior toward her. Colin had touched Misty inappropriately on several occasions and once gave her a suggestive birthday card. Defendant knew that Colin had recently bought a gun, and that he had been carrying the gun at his side. The night of the incident, defendant and Colin got into an argument. Defendant went into his bedroom and overheard Colin trying to convince Misty to come into his bedroom. Defendant believed Colin was trying to persuade Misty to have sex with him. Defendant came into the living room, and asked Colin why he wanted to have sex with his own mother.

At trial, defendant testified that he "snapped" after Colin said, "Yes, I fucked my mother. What are you going to fucking do about it, shoot me, motherfucker?" Colin reached for his waist, and defendant raised his arm and shot Colin. On cross-examination, defendant was asked if Colin was reaching for his gun, to which defendant testified, "I thought he was. . . . I guess he wasn't."

D. Verdict and Sentence

The jury found defendant not guilty of first degree murder, but guilty of the lesser included offense of second degree murder, and found true a firearm allegation. The trial court sentenced him to 15 years to life on the murder charge, plus 25 years to life for his use of a firearm in the commission of the murder, for a total of 40 years to life in prison. This appeal ensued.

II. DISCUSSION

A. Self-defense

Defendant argues that the trial court erred in not instructing the jury sua sponte on self-defense. We conclude that he was not entitled to an instruction on either reasonable self-defense or voluntary manslaughter based on imperfect self-defense.

Generally, even without the request of either the prosecution or defense, a criminal trial court has a duty to instruct a jury on those principles of law relevant to the jury's determination and its understanding of the case. (*People v. St. Martin* (1970) 1 Cal.3d

524, 531; *People v. Castillo* (1969) 70 Cal.2d 264, 270–271, fn. 5.) This duty protects a defendant's right under the California Constitution to have his or her case decided by a jury fully informed on the law, and is founded on the public policy of ensuring that "the 'strategy, ignorance, or mistakes' " of either the prosecution or defense do not preclude the jury's factfinding function, thereby diminishing the " 'overall administration of justice.' " (*People v. Breverman* (1998) 19 Cal.4th 142, 155.)

Murder is the unlawful killing of a human being with malice aforethought. (§ 187, subd. (a).) A defendant's claim to have acted in self-defense can affect a murder charge in two ways. A defendant who is found to have killed in *reasonable* self-defense is exonerated from the charge. A defendant who is found to have killed in imperfect self-defense—"the *unreasonable* but good faith belief in having to act in self-defense"—is convicted of the lesser included offense of voluntary manslaughter. (*People v. Barton* (1995) 12 Cal.4th 186, 199, italics added.)

Because reasonable self-defense is an affirmative defense and voluntary manslaughter based on imperfect self-defense is a lesser-included offense, a trial court's sua sponte duty to instruct on each theory is different. An instruction on voluntary manslaughter based on imperfect self-defense, unlike an instruction on reasonable self-defense, must be given sua sponte if there is substantial evidence in the record to support it, even if self-defense is inconsistent with the defendant's theory of defense. (*People v. Barton, supra,* 12 Cal.4th at p. 201.)

Evidence is sufficiently substantial to trigger a trial court's duty to instruct the jury sua sponte if it is "evidence that a reasonable jury could find persuasive." (*People v. Barton, supra,* 12 Cal.4th at p. 201, fn. 8.) It has also been defined as "evidence sufficient for a reasonable jury to find in favor of the defendant." (*People v. Salas* (2006) 37 Cal.4th 967, 982.) The trial court's duty to instruct, sua sponte, on affirmative defenses is more limited and arises only "if there is substantial evidence of the defense *and* if it is not inconsistent with the defendant's theory of the case." (*People v. Wilson* (2005) 36 Cal.4th 309, 331, italics added.) (*People v. Breverman, supra,* 19 Cal.4th at p. 157; *People v. Barton, supra,* 12 Cal.4th at p. 195.) Ultimately, this difference does

not affect the outcome here because we conclude that there was insufficient evidence that defendant actually believed he was in imminent danger, as required to establish either theory of self-defense. (*People v. Barton*, *supra*, 12 Cal.4th at pp. 199–200.)

Defendant contends the evidence that Colin owned a gun which he kept in his waistband, combined with defendant's testimony and statements that he saw Colin make a motion toward his waistband at the time of the shooting, is substantial evidence that defendant acted in self-defense. These facts alone are insufficient to support an inference that defendant believed he was in imminent danger, because the evidence that defendant believed Colin had a gun on his person and feared for his own safety does not rise to the level of substantial evidence. It is true that defendant at trial suggested he thought Colin was reaching for his gun when he shot him, and defendant made more direct statements to the same effect when he was interviewed by the police. But defendant also stated that he fired his gun only to scare Colin and told the detectives he was not sure if Colin had a gun and that Colin "couldn't shoot [him] because he doesn't know shit about guns." The crux of defendant's testimony and defense was that defendant shot Colin because he "snapped" when Colin said to him, "Yes, I fucked my mother. What are you going to fucking do about it, shoot me, motherfucker?" Likewise, in his interview with the police, defendant said he would not have shot Colin if Colin had not made that statement. No reasonable interpretation of the evidence would allow a jury to conclude that defendant acted in either reasonable or imperfect self-defense, and the trial court therefore did not err in omitting these instructions.

B. Motion for New Trial Based on Alleged Juror Misconduct

1. Factual Background

Prospective jurors were asked to fill out a questionnaire before voir dire. As a part of the questionnaire, jurors were asked whether they or anyone close to them had been arrested or convicted for any crime, and whether they, any family member, or a close friend had been incarcerated in or visited any jail or prison. One of the prospective jurors, M.G., responded that 21 years ago, she had been arrested for petty theft, and that she had spent five days in jail. M.G. also disclosed in the questionnaire that she was

studying Administration of Justice. She thought crime was a serious problem in the community and that the system works when the criminal is caught.

One week after the trial ended, defense counsel saw M.G. in the Public Defender's office, waiting for a client of the office, Thomas J., to be sentenced. Counsel was informed M.G. was involved in a romantic relationship with Thomas J. He began an investigation into M.G.'s background and, based on his investigation, brought a motion for a new trial based on juror misconduct. According to the motion, M.G. was married until 2006 to someone who had spent a significant amount of time in prison, whom she had visited in jail 23 times.

At the evidentiary hearing on the motion, the court asked M.G. to look at the questions again, focusing on whether anybody close to her has ever been investigated, arrested, accused, or convicted of a crime. The following exchange took place: "The Witness: I must have—I just answered myself; I didn't answer for the rest of them. I have way too many family members that have to be listed here. I'm answering for myself. I'm sorry. [¶] The Court: Can you explain why you answered for yourself and not others? [¶] The Witness: Probably—have you—I didn't think of that—about the family member or close friend part. [¶] The Court: I don't want to put words in your mouth. [¶] The Witness: I just noticed, yeah. I just focused on the me part. Yeah, I would need sheets and sheets and sheets to fill out for family members and close friends."

The court then asked M.G. to list any family member who had been accused or convicted of a crime. M.G. listed her father, uncle, brother, nieces, and cousin.

M.G.'s father had spent time in jail. M.G. did not know why, but mentioned that "he went AWOL several times from the army. But other than that—driving without a license. . . ." M.G.'s uncle had been arrested for driving under the influence. M.G.'s brother had had several convictions involving various assaults and batteries. M.G.'s cousin was incarcerated for murder or attempted murder. When asked how close M.G. is to her cousin, M.G. responded, "not close at all. I don't know anything about him. I have a lot of family members I don't know I'm related to."

M.G. also named her former fiancé, to whom she had been engaged 16 years previously, and who was being investigated for murder or attempted murder. She had visited him in county jail about three times in the 90-day period before she served as a juror on this case. A close friend had recently been arrested for burglary or conspiracy to commit burglary and shoplifting. M.G. testified that she knew Thomas J. as an acquaintance, and that she did not know he was in jail until after she had served on the jury in this case.

M.G. testified that she was married to her ex-husband eight years ago, that they were married for six months, that she had had no contact with him since their divorce, and that before that time, he had spent "most of his life" in custody.

When asked if at any time it had crossed M.G.'s mind to discuss any of these people, M.G. responded, "No. I was just thinking that they were personal questions. I didn't even—I think I was in a hurry that day or something." M.G. thought the questions were directed at her and "must not have read the thing through."

M.G. testified that she did not discuss any of this information with other jurors and "just focused on the case and the evidence . . . and didn't talk about outside matters." When asked, "did those life experiences, your relatives or visiting the jail or even current friends being prosecuted, did any of that affect or influence your deliberations . . . detrimentally towards the defendant," M.G. responded, "No." M.G. had been asked by another juror why she was taking a criminal justice class, and she had replied, "I wanted to be the one family member who is on the opposite side of the law," which she explained meant "on the good side."

2. The Court's Ruling

The trial judge denied the motion for new trial, finding M.G. had "viewed [the questions] generally as referring to her personally and not to anybody other than herself." The court stated: "I found on—both on examination and cross-examination by counsel, I found the juror to be very credible. I also believe it's my personal impression when I was questioning her and first brought to her attention the fact that those particular questions solicited information not only from her, but also regarding other people, it seemed to me

that she was generally surprised when I questioned her on the witness stand. So I think, you know, as soon as I—as soon as I asked her, brought that to her attention, she was also immediately forthcoming. She just sort of blurted out that she had a huge or—sounded like a greater number when she started, there were certainly a number of people who fit that category whom I think she felt should have been disclosed.

"And I did not think—I did not get any impression that she was dissembling in anyway or that she had intentionally withheld that information. I—I still feel the question was reasonable. It was reasonably phrased that it did solicit information regarding other people. But I feel that the juror testified credibly and as I say, that she was genuinely surprised after reading it more carefully after referring her to it and she realized that it did solicit information beyond the scope that she had provided.

"I also thought she testified credibly that she did not take that information; that is, regarding other family members or friends, into consideration in her own decision in her own analysis of the facts or in her individual decision in the jury room as to whether or not Mr. Reyes was guilty or not guilty and that she did not mention any of that information to any other juror.

"I think both counsel examined and cross-examined her a little bit on this—to some extent on these particular topics. She did not imply, I think, or leave any doubt that those statements were, in fact, true. That it had not influenced her and that she had not mentioned it to anybody else."

The trial judge found that M.G.'s failure to disclose the criminal records of her family and friends was "unintentional, unknowing. It was not an intentional failure to disclose. It was not an act of concealment." Since M.G. did not consider these facts in reaching her decision and did not mention them to any other juror, the judge found that even if her failure to disclose constituted misconduct, there was no reasonable probability of actual harm to defendant.

3. Discussion

Defendant contends M.G's failure to disclose her family and friends' criminal history in response to the questions on the voir dire questionnaire constituted misconduct and violated defendant's Sixth Amendment right to an impartial jury. We disagree.

"A criminal defendant has a constitutional right to an impartial jury, and the pretrial voir dire process is important because it enables the trial court and the parties to determine whether a prospective juror is unbiased and both can and will follow the law. But the voir dire process works only if jurors answer questions truthfully. 'As the United States Supreme Court has stated, "*Voir dire* examination serves to protect [a criminal defendant's right to a fair trial] by exposing possible biases, both known and unknown, on the part of potential jurors. Demonstrated bias in the responses to questions on voir dire may result in a juror's being excused for cause; hints of bias not sufficient to warrant challenge for cause may assist parties in exercising their peremptory challenges. The necessity of truthful answers by prospective jurors if this process is to serve its purpose is obvious." [Citation.] [¶] A juror who conceals relevant facts or gives false answers during the voir dire examination thus undermines the jury selection process and commits misconduct.' [Citation.]" (*People v. Wilson* (2008) 44 Cal.4th 758, 822–823; see also *People v. Castaldia* (1959) 51 Cal.2d 569.)

"When misconduct involves the concealment of material information that may call into question the impartiality of the juror, we consider the actual bias test of *People v. Jackson* (1985) 168 Cal.App.3d 700, 705, adopted by [the Supreme Court] in *People v. McPeters* (1992) 2 Cal.4th 1148, 1175 [(*McPeters*), superseded by statute on another point as stated in *People v. Wallace* (2008) 44 Cal.4th 1032, 1087]. 'Although intentional concealment of material information by a potential juror may constitute implied bias justifying his or her disqualification or removal [citations], mere inadvertent or unintentional failures to disclose are not accorded the same effect. "[T]he proper test to be applied to unintentional 'concealment' is whether the juror is sufficiently biased to constitute good cause for the court to find under Penal Code sections 1089 and [former] 1123 that he is unable to perform his duty." (*People v. Jackson* [*supra,* 168 Cal.App.3d at

p. 706].) [¶] Whether a failure to disclose is intentional or unintentional and whether a juror is biased in this regard are matters within the discretion of the trial court. Except where bias is clearly apparent from the record, the trial judge is in the best position to assess the state of mind of a juror or potential juror on voir dire examination. [Citations.]' [Citation.]" (*People v. San Nicolas* (2004) 34 Cal.4th 614, 644 [new trial motion].)

Applying the principles of *McPeters*, we conclude the trial court did not err in denying the new trial motion. The trial court found M.G.'s omissions were unintentional. This was a matter within the trial court's discretion, and we see no abuse of that discretion. Although M.G. said she had too many family members to list on the questionnaire, she also testified that she had been hurrying when answering the questionnaire, that she had focused on the "me" part of the questionnaire, that she must not have read the questionnaire through, and that she first noticed the questions about family and close friends at the evidentiary hearing. The trial court had an opportunity to observe her demeanor, and found her statements credible and said she seemed genuinely surprised when she read the questionnaire more carefully at the evidentiary hearing.

Under *McPeters*, where a juror's failure to disclose is unintentional, the verdict must be overturned only if the juror is sufficiently biased that she cannot do her duty. (*McPeters, supra*, 2 Cal.4th at p. 1175.) This finding is also within the trial court's discretion. (*Ibid.*) The trial court here found M.G. was credible when she testified her family and friends' criminal records did not influence her own analysis of the facts of the case or her deliberations in the jury room and that she did not mention that information to the other jurors. The record supports these findings. Defendant argues that M.G.'s study of Administration of Justice and her belief that crime was a serious problem and that the system works when the criminal is caught indicated her prejudice against defendant. This argument is not persuasive. Defendant was well aware of this information before trial. On this record, we conclude the trial court properly denied the new trial motion.

III. DISPOSITION

The judgment is affirmed.

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Rivera, J.

We concur:

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Ruvolo, P.J.

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Humes, J.